IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5688 OF 2004

Shri Jayant Kuvarji Saliya & Anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr.A.H.H.Ponda for Applicants.

Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 17, 2004.

P.C.

1. Heard Counsel for the parties.

2. The Court below has cancelled the bail, which was granted in favour of the Applicants on the solitary allegation that telephonic threats were being received by the brother of the Complainant, not to depose against the accused. The letter which is placed on record at Page 35

makes no reference to the fact that the telephone was received from the present Applicants or at their instance. Besides, learned A.P.P. fairly accepts that no effort has been made by the Investigating Officer to verify the correctness of the grievance made in the complaint given in writing by the said witness. Moreover, there is substance in the argument canvassed at the instance of the present Applicants that there was no occasion for the Applicants to threaten the said witness, especially when he has not named the Applicants specifically in the statement recorded under Section 161 of the Criminal Procedure Code.

3. Suffice it to observe that the prosecution has rushed to the Sessions Court for cancellation of bail, without proper scrutiny of the allegation contained in letter dated 14th August 2004. It would have been a different matter if such attempt was made and some positive material to indicate the complicity of the Applicants was forthcoming. In the circumstances, the order of cancelling bail in my opinion cannot be sustained. The same will have to be set aside and instead, the earlier bail order

would operate in favour of the Applicants. It is made clear that it will be open to the prosecution to move fresh application for cancellation of bail, if sufficient material to support that plea becomes available in future.

4. Application disposed of on the above terms.

A.M.KHANWILKAR, J.